

HOUSE BILL NO. 49

INTRODUCED BY WILSON

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW REQUIRING THE REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; AMENDING THE DEFINITION OF "SEXUAL OFFENSE"; CHANGING ~~WHO~~ WITH WHOM AN OFFENDER MUST REGISTER ~~WITH~~; CLARIFYING THE PROCEDURE FOR NOTICE OF A CHANGE OF AN OFFENDER'S ADDRESS; CHANGING THE PROCEDURE FOR PETITIONING FOR RELIEF FROM REGISTRATION AFTER 10 YEARS; ALLOWING AN OFFENDER CONVICTED IN ANOTHER JURISDICTION TO BE GIVEN THE RISK LEVEL DESIGNATION ASSIGNED BY THAT JURISDICTION; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, ~~46-23-508~~, AND 46-23-509, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-502(3),

45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim), 45-5-603(1)(b), or 45-5-625; or

(b) any violation of a law of another state or the federal government that is reasonably equivalent to a violation listed in subsection (6)(a) or for which the offender was required to register as a sex offender after conviction.

(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register -- procedure. (1) A sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 10 days or more or for an aggregate period exceeding 30 days in a calendar year.

(2) Registration under subsection (1)(a) or (1)(c) must be with the ~~probation office having supervision over the offender. Registration under subsection (1)(c) must be with the~~ chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. ~~Whichever person an law enforcement official the~~ offender registers with ~~under subsection (1)(c)~~ shall notify the other ~~person official~~ of the registration. The probation officer having supervision over an offender required to register under subsection

1 ~~(1)(a) shall ensure that the offender registers~~ VERIFY THE OFFENDER'S REGISTRATION STATUS with the appropriate
2 law enforcement agency.

3 (3) At the time of registering, the offender shall sign a statement in writing giving the information
4 required by the department of justice. The chief of police or sheriff shall fingerprint the offender, unless the
5 offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days,
6 the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department
7 of justice.

8 (4) (a) The department of justice shall mail a registration verification form:

9 (i) each 90 days to an offender designated as a level 3 offender under 46-23-509 or given a designation
10 by the department under 46-23-509(6) that the department determines to be similar to a level 3 designation; and

11 (ii) each year to a violent offender or an offender designated as a level 1 or level 2 offender under
12 46-23-509 or given a designation by the department under 46-23-509(6) that the department determines to be
13 similar to a level 1 or level 2 designation.

14 (b) The form must require the offender's current address and notarized signature. Within 10 days after
15 receipt of the form, the offender shall complete the form and return it to the department.

16 (5) The offender is responsible, if able to pay, for costs associated with registration. The fees charged
17 for registration may not exceed the actual costs of registration. The department of justice may adopt a rule
18 establishing fees to cover registration costs incurred by the department of justice in maintaining registration and
19 address verification records. The fees must be deposited in the general fund.

20 (6) The clerk of the district court in the county in which a person is convicted of a sexual or violent
21 offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."
22

23 **Section 3.** Section 46-23-505, MCA, is amended to read:

24 **"46-23-505. Notice of change of address -- duty to inform -- forwarding of information.** If an
25 offender required to register under this part ~~changes residence~~ has a change of address, the offender shall
26 within 10 days of the change give written notification of the new address to the agency with whom the offender
27 last registered or, to the department if the offender was initially registered under 46-23-504(1)(b), TO THE
28 DEPARTMENT AND TO THE CHIEF OF POLICE OF THE MUNICIPALITY OR SHERIFF OF THE COUNTY FROM WHICH THE
29 OFFENDER IS MOVING. The agency or department shall, within 3 days after receipt of the new address, forward
30 it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff

1 having jurisdiction over the new ~~place of residence~~ address and to the chief of police of the municipality of the
2 new ~~place of residence~~ address if the new ~~place of residence~~ address is in a municipality."

3
4 **Section 4.** Section 46-23-506, MCA, is amended to read:

5 **"46-23-506. Duration of registration.** (1) A sexual offender required to register under this part shall
6 register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time
7 during which the offender is in prison.

8 (2) A violent offender required to register under this part shall register:

9 (a) for the 10 years following release from confinement or, if not confined following sentencing, for the
10 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register
11 until a petition is granted under subsection (3)(a); or

12 (b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep
13 registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register
14 as provided in subsection (3)(b).

15 (3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have
16 passed, petition the sentencing court or the district court for the judicial district in which the offender resides for
17 an order relieving the offender of the duty to register. The petition must be served on the county attorney in the
18 county where the petition is filed. The petition must be granted if the defendant has not been convicted under
19 subsection (2)(b).

20 (b) Except as provided in subsection (5), at any time after 10 years of registration, the an offender
21 required to register for life may petition the sentencing court or the district court for the judicial district in which
22 the offender resides for an order relieving the offender of the duty to register. The petition must be served on
23 the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney
24 shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's
25 address is reasonably available. The court shall consider any written or oral statements of the victim. The court
26 may grant the petition upon finding that:

27 ~~(a)~~(i) the offender has remained a law-abiding citizen; and

28 ~~(b)~~(ii) continued registration is not necessary for public protection and that relief from registration is in
29 the best interests of society.

30 (4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be

1 closed to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection
2 (3)(b) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge
3 determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the
4 victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to
5 provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect
6 the offender's right to privacy.

7 (5) Subsection (3) does not apply to an offender who was convicted of:

8 (a) a violation of 45-5-503 if:

9 (i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another;

10 or

11 (ii) at the time the offense occurred, the victim was under 12 years of age;

12 (b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and
13 the offender was 3 or more years older than the victim;

14 (c) a second or subsequent sexual offense that requires registration; or

15 (d) a sexual offense and was designated as a sexually violent predator under 46-23-509."
16

17 ~~Section 5. Section 46-23-508, MCA, is amended to read:~~

18 ~~"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential~~
19 ~~criminal justice information, as defined in 44-5-103, except that:~~

20 ~~(a) the name and address of a registered sexual or violent offender are public criminal justice~~
21 ~~information, as defined in 44-5-103; and~~

22 ~~(b) a law enforcement agency shall release any offender registration information relevant to the public~~
23 ~~if the agency determines that a registered offender is a risk to the safety of the community and that disclosure~~
24 ~~of the registration information may protect the public and, at a minimum:~~

25 ~~(i) if an offender was given a level 1 designation under 46-23-509 or given a designation by the~~
26 ~~department under 46-23-509(6) that the agency determines to be similar to a level 1 designation, the agency~~
27 ~~with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the~~
28 ~~registration;~~

29 ~~(ii) if an offender was given a level 2 designation under 46-23-509 or given a designation by the~~
30 ~~department under 46-23-509(6) that the agency determines to be similar to a level 2 designation, the agency~~

with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:

_____ (A) the offender's address;

_____ (B) the type of victim targeted by the offense;

_____ (C) the name, photograph, and physical description of the offender;

_____ (D) the offenses for which the offender is required to register under this part; and

_____ (E) any conditions imposed by the court upon the offender for the safety of the public; and

_____ (iii) if an offender was given a level 3 designation under 46-23-509 or given a designation by the

department under 46-23-509(6) that the agency determines to be similar to a level 3 designation, the agency

shall give the victim and the public notification that includes the information contained in subsection (1)(b)(ii).

The agency shall also include the date of the offender's release from confinement or if not confined, the date

the offender was sentenced, with a notation that the offender was not confined, and shall include the community

in which the offense occurred.

_____ (c) prior to release of information under subsection (1)(b), a law enforcement agency may, in its sole

discretion, request an in camera review by a district court of the determination by the law enforcement agency

under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as

possible, render its opinion so that release of the information is not delayed beyond release of the offender from

confinement.

_____ (2) The identity of a victim of an offense for which registration is required under this part may not be

released by a law enforcement agency without the permission of the victim.

_____ (3) A state or local law enforcement agency may use the internet to disseminate the information allowed

by this section to the public."

Section 5. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations -- rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender

evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement ~~or, if the offender's offense is covered by 46-23-502(6)(b), after the offender enters this state.~~

(6) If an offense is covered by 46-23-502(6)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department OF JUSTICE may give the offender the risk level designation assigned by the other state or the federal government."

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